



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 624065 A

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 624064 A and 624065 A, the Appeal Board, on its motion pursuant to Labor Law § 534, has reopened and reconsidered Appeal Board Nos.

621470 and 621471, filed May 16, 2022, which modified the decisions of the Administrative Law Judge and sustained the initial determination holding the claimant ineligible to receive benefits, effective September 27, 2020, on the basis that the claimant was not available for employment, to be effective March 26, 2021 through December 15, 2021, as modified; and sustained the initial determination charging the claimant with an overpayment of \$6,930 in benefits recoverable pursuant to Labor Law § 597 (4); Pandemic Emergency

Unemployment Compensation (PEUC) of \$378 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and Federal Pandemic Unemployment Compensation (FPUC) of \$4,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, as modified in accordance with the decisions. The Board referred the amount of the overpayments back to Department of Labor for recalculation.

Upon consideration of the entire record, the Board makes the following

FINDINGS OF FACT: The claimant, a citizen of Kosovo, was authorized to work in the United States until September 26, 2020. His work authorization employment authorization (EAD) falls within category C08 which makes him eligible for an automatic 180-day extension if he applied to renew his EAD before it expired. He applied for a new EAD card. The United States Citizenship and Immigration

Service (USCIS) notified the claimant through form I-797C (Notice of Action) that the "Receive Date" of the application was April 15, 2021. Thereafter, the claimant received his new EAD card which was effective December 16, 2021 to December 15, 2023.

Between September 27, 2020 and April 4, 2021, the claimant certified that there were no days where he was not ready, willing, and able to work. The claimant received \$6,930 in regular benefits, \$378 in PEUC benefits, and \$4,200 in FPUC benefits.

OPINION: The Board reopened its decisions because they erroneously held that the mailing of an application to renew an EAD card entitled the claimant to a 180-day extension of his work authorization.

USCIS rules provide that foreign nationals in certain eligibility categories will receive an automatic extension of 180 days on their expiring EADs but only if the renewal was filed prior to the expiration date and the eligibility category on the expiring EAD is the same as the eligibility category on the Form I-797C. Under 8 CFR 274a.13(d)(1), the validity period of an expiring Employment Authorization Document (Form I-766) and, for aliens who are not employment authorized incident to status, also the attendant employment authorization, will be automatically extended for an additional period not to exceed 180 days from the date of such document's and such employment authorization's expiration if a request for renewal on a form designated by USCIS is:

(i) Properly filed as provided by form instruction before the expiration date shown on the face of the Employment Authorization Document...

The credible evidence establishes that the claimant's work authorization expired on September 26, 2020. The claimant's contention that he is eligible for an automatic 180-day extension of his work authorization because he mailed his application to USCIS prior to April 15, 2021 is not persuasive. The documentation from USCIS established that the "Receive Date" of the application was April 15, 2021. As the application was not properly filed until April 15, 2021, the claimant was not entitled to the automatic 180-day extension. The claimant was not authorized to work in the United States from September 27, 2020 through December 15, 2021. Therefore, the claimant was not able to accept work during this time. A claimant who is not able to accept work immediately is not available for work and is ineligible for benefits.

Accordingly, we conclude that the claimant is ineligible for benefits from September 27, 2020 through December 15, 2021. The Board's decisions are consistent with the outcome in Appeal Board Nos. 619454 and 619455.

As the claimant was ineligible to receive benefits, he was overpaid the regular and federal benefits that he received. As he made factually false statements that he was ready, willing and able to work, we further conclude that the regular benefits are recoverable. We further conclude that the federal benefits are recoverable as a matter of law.

DECISION: The decisions of the Appeal Board are rescinded.

The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 624064 A, the initial determination, holding the claimant ineligible to receive benefits, effective September 27, 2020, on the basis that the claimant was not available for employment, is modified to be effective September 27, 2020 through December 15, 2021, and, as so modified, is sustained.

In Appeal Board Nos. 624065 A, the initial determination, charging the claimant with an overpayment of \$6,930 in benefits recoverable pursuant to Labor Law § 597 (4); Pandemic Emergency Unemployment Compensation (PEUC) of

\$378 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and Federal Pandemic Unemployment Compensation (FPUC) of \$4,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER